

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-04

Date issued: January 23, 1990

Requested by: Senator John M Olson, District 49

- QUESTION PRESENTED -

Whether meetings of the State Bar Board are required by the North Dakota open meetings law to be open to the public.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that meetings of the State Bar Board are required by the North Dakota open meetings law to be open to the public.

- ANALYSIS -

Admission to the practice of law in North Dakota is governed by N.D. Const. art. VI, ' 3, which states, in relevant part, as follows:

The supreme court shall have authority to promulgate rules of procedure, including appellate procedure, to be followed by all the courts of this state; and, unless otherwise provided by law, to promulgate rules and regulations for the admission to practice, conduct, disciplining, and disbarment of attorneys at law.

The Legislature established the State Bar Board. N.D.C.C. ' 27-11-06. The Board possesses those powers and duties relating to the admission of applicants to the bar as prescribed by state law or by supreme court rule. N.D.C.C. ' 27-11-13. The North Dakota Supreme Court has authorized the State Bar Board to receive applications for admission to the bar of this state and to examine applicants. N.D. Admin. Prac. R. 3, 4, and 5. The Court has authorized the State Bar Board to require an applicant to appear before the Board to answer questions. N.D. Admin. Prac. R. 6(A). Additionally, the Court has provided for a formal hearing before the Board following a negative recommendation for admission to the bar. The Board's decision is subject to review by the Supreme Court. N.D. Admin. Prac. R. 6(B), (C).

North Dakota's open meetings law is found in our state constitution and in statute. N.D. Const. art. XI, ' 5 provides as follows:

Section 5. Unless otherwise provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state,

or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public.

N. D. C. C. ' 44-04-19 constitutes the statutory provision requiring open governmental meetings. That statute states as follows:

44-04-19. Open governmental meetings.--Except as otherwise specifically provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, shall be open to the public. The governing members of the above bodies, boards, commissions, agencies, or organizations meeting in violation of this section shall be guilty of an infraction for a first offense. A public or governmental body, board, bureau, commission, or agency meets in violation of this section if it refuses any person or persons access to such meeting, unless such refusal, implicitly or explicitly communicated, is due to lack of physical space in the meeting room for the person or persons seeking access.

The key to determining the applicability of the North Dakota open meetings law to meetings of the State Bar Board is N.D. Const. art. VI, ' 3. This constitutional provision authorizes the Supreme Court to regulate the admission of persons to the practice of law in this state "unless otherwise provided by law." The North Dakota open meetings law is a requirement "otherwise provided by law." Thus, it is my opinion that the Supreme Court's authority to regulate the admission of persons to the practice of law is subject to the open meetings law.

Both the constitutional and statutory open meetings provisions state that the requirement of open meetings applies unless otherwise specifically provided by law. In other words, all meetings of public bodies must be open to the public unless a law specifically allows for a closed meeting of that body. See Hovet v. Hebron Pub. School Dist., 419 N.W.2d 189, 191 (N.D. 1988). Id. An exception to the open meetings law must be specifically provided as opposed to impliedly inferred.

There is no specific exception to the North Dakota open meetings law for the State Bar Board. Thus, the requirement that meetings of public bodies be open to the public applies to meetings of the State Bar Board.

- EFFECT -

This opinion is issued pursuant to N.D.C.C ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by

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the courts.

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